

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

BACK COUNTRY BOOKS, INC. d/b/a BOULDER BOOKSTORE,¹

Employer,

and

Case 27-RC-8361

UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL NO. 7, AFL-CIO

Petitioner.

DECISION AND DIRECTION OF ELECTION

On December 20, 2004, United Food and Commercial Workers Union, Local No. 7, AFL-CIO (the Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent certain employees employed by Back Country Books, Inc. d/b/a Boulder Bookstore (the Employer) at its bookstore located in Boulder, Colorado.

On December 30, 2004, a hearing regarding the above petition was conducted before Erika K. Bailey, a hearing officer of the National Labor Relations Board. The record discloses that the Employer owns and operates a retail bookstore in Boulder, Colorado consisting of approximately 20,000 square feet on four floors. The evidence reflects that during any 12-month timeframe,

¹ The name of the Employer appears as amended at the hearing.

the Employer has gross retail sales valued in excess of \$500,000 and receives goods valued in excess of \$5,000 directly from suppliers located outside the State of Colorado. The parties agreed that an appropriate unit would consist of what the record shows to be all employees, excluding all professional employees, guards and supervisors as defined in the Act.² I find this unit of approximately 44 employees is an appropriate bargaining unit. The sole remaining issue for determination is the supervisory status of the Employer's four coordinator/supervisors, Kate Pilant, J.K. Melton, Tom O'Leary and Lee Beaupre. The Employer takes the position that the coordinator/supervisors should be excluded from the appropriate unit as statutory supervisors, while the Petitioner contends that they should be included in the unit. After careful consideration, I find that the record is insufficient to permit me to determine the supervisory status of the coordinator/supervisors. Accordingly, I find that the coordinator/supervisors should be permitted to vote subject to challenge.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

² The parties stipulated, and I find, that the following are supervisory positions that should be excluded from any unit found to be appropriate: inventory manager, accounting manager, technical support manager, corporate services manager, promotions manager, floor manager, president, and owner.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following unit of employees:

INCLUDED: All employees employed by the Employer at its Boulder, Colorado bookstore;

EXCLUDED: All professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.³ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently

³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL NO. 7, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the

eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before **January 25, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 1, 2005**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 18th day of January 2005.

B. Allan Benson, Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433